

**OFFICE OF THE  
STATE AUDITOR**

**Minnesota Legal Compliance  
Audit Guide for  
Towns**

ORDER

Pursuant to Minn. Stat. § 6.65, I hereby prescribe the form and scope of the Minnesota Legal Compliance Audit Guide for Towns. The attached audit guide is hereby incorporated in its entirety. The audit guide consists of the following sections:

Page 1-1	Depositories of Public Funds and Public Investments,
Page 2-1	Conflicts of Interest,
Page 3-1	Public Indebtedness,
Page 4-1	Contracting - Bid Laws,
Page 5-1	Claims and Disbursements,
Page 6-1	Examples of Independent Auditor's Reports,
Page 7-1	Miscellaneous Provisions, and
Page 8-1	Tax Increment Financing.

These sections will comprise the minimum procedures and audit scope for legal compliance for towns in Minnesota.

/s/

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Rebecca Otto  
State Auditor

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## INTRODUCTION

This Legal Compliance Audit Guide (Audit Guide) was prepared by the Office of the State Auditor pursuant to Minn. Stat. § 6.65, in consultation with representatives from the Attorney General's Office, towns, cities, counties, school districts, and private sector public accountants. The Legal Compliance Audit Guide establishes minimum compliance guidelines for verification by auditors engaged in the process of auditing towns of the state.

This Audit Guide is divided into specific sections and presented in checklist form to assist the auditor of government units in the verification of statutory compliance. The Audit Guide is not meant to be a complete compilation of all laws affecting municipalities or a complete analysis of the laws cited throughout. The checklist is meant to act as a reference guide regarding minimum legal compliance, and municipal auditors must examine, in addition to applicable laws cited in the guide, those laws creating, granting power to, and restricting the municipal entities they are auditing.

Under each section, except for the initial question establishing the transaction covered by the topic heading and except where the explanation of a given question indicates otherwise, all questions should be answered in the affirmative. A negative answer indicates a compliance problem, and the user of the checklist is directed to the statutory section indicated on the left-hand side of the page. If after examination of the appropriate statute, the auditor using this Audit Guide is still unsure as to whether there has been legal compliance, he or she should check with legal counsel before rendering the opinion on compliance contained at the end of each section.

### AUDITOR'S REPORTS ON COMPLIANCE

Chapter 6 contains 20 model reports to be completed by the auditor following his or her completion of the appropriate compliance sections.

The report or the language from the report must be issued as part of the audits of the Town.

### PREPARATION OF MINUTES

Auditing for legal compliance will require a review of the minutes of the Town Board. In many instances, the minutes will be inadequate histories of the meetings involved. We have, therefore, deemed it appropriate to include below a discussion of minutes, so that in those instances where the minutes are substandard, auditors can provide a standard to assist clients in the future recording of meeting minutes.

Minutes may be defined as a record of the “proceedings” of a deliberative body. Various statutes that refer to taking or publishing minutes use the term “proceedings” or “official proceedings.” *See* Minn. Stat. §§ 384.09 (counties); 412.151, subd. 1 (statutory cities); 367.11(1) (towns); and 123B.09, subd. 10 (school districts). The Minnesota Attorney General has used the definition of “proceedings” found at Minn. Stat. § 331A.01, subd. 6, in analyzing the clerk’s duties to take minutes. This statute states:

“Proceedings” means the substance of all official actions taken by the governing body of a political subdivision at any regular or special meeting, and at minimum includes the subject matter of a motion, the persons making and seconding a motion, the roll call vote on a motion, the character of resolutions or ordinances offered, including a brief description of their subject matter, and whether defeated or adopted.

While minutes must specifically identify the actions taken by the body, they need not record the discussions of the members and others. At a minimum, the minutes must include the information required by Minn. Stat. ch. 13D [Minnesota Open Meeting Law], unless such information is recorded elsewhere. Minn. Stat. § 13D.01, subd. 4, provides:

The votes of the members of the state agency, board, commission, or department; or of the governing body, committee, subcommittee, board, department, or commission on an action taken in a meeting required by this section to be open to the public must be recorded in a journal kept for that purpose. . . . The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

In addition, subd. 5 states, “[t]he journal must be open to the public during all normal business hours where records of the public body are kept.”

The above provision requires that the individual votes of each member of the governing body on “an action” be specifically recorded except for votes on “payments of judgments, claims, and amounts fixed by statute.”

Having satisfied minimum requirements, the question of how elaborate and extensive the minutes should be is largely a policy matter for determination by the particular body in the exercise of reasonable judgment and discretion. The Attorney General has explained:

...there may be circumstances in which it would be advisable for the town board to provide for the minutes to include information over and above what is necessary to satisfy minimum statutory requirements for a record of its official actions.

Op. Atty. Gen. 851-C, March 5, 1992. For example, the board’s reasons for reaching a particular decision could be crucial in defending a challenge to the action taken. The inclusion of such information may be deemed appropriate under other circumstances, such as where the body determines that the public interest warrants the award of a particular contract to a bidder other than the lowest bidder.

Other examples might be zoning decisions, such as the granting of variances or special use permits. In any case, the amount of detail which is appropriate for inclusion in the minutes of a particular body is likely to vary, depending upon the nature of the proceedings and the subject matter involved.

While the minutes of a governing body should attempt to furnish relevant information over and above bare minimum requirements, they should not, at the same time, be cluttered with unnecessary detail which hampers efforts to review or otherwise utilize them at a later date. Perhaps the best standard to be applied to the preparation of minutes is the one applied by the courts to the publication of official proceedings, i.e., the minutes should be “sufficiently full to fairly set forth the proceedings.” *Ketterer v. Indep. Sch. Dist. No. 1*, 79 N.W.2d 428, 438 (Minn. 1956); *See Op. Atty. Gen. 161-a-20*, Dec. 17, 1970.

## DESTRUCTION OF RECORDS

Minnesota Statutes § 15.17, subd. 1, requires all officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, and other public authorities or political entities within the state to make and preserve all records necessary for “a full and accurate knowledge of their official activities.” The chief administrative officer is responsible for the preservation and care of the agency’s government records, which include all “written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business.” Minn. Stat. § 15.17, subd. 2. This duty not only prohibits destruction, but requires the custodian to take such steps as are necessary to protect public records from deterioration, mutilation, loss, or destruction. This statute also requires that all records must be delivered to the legal custodian’s successor upon expiration of the term of office or authority. Minn. Stat. § 15.17, subd. 3. Additional provisions regarding data practices are found in the Minnesota Government Data Practices Act, Minn. Stat., ch. 13.

For towns having problems with the storage of obsolete records, Minn. Stat. §§ 138.163-.25 provide relief. Any person who intentionally and unlawfully removes, mutilates, destroys, conceals, alters, defaces or obliterates a public record is guilty of a misdemeanor. Minn. Stat. § 138.225.

Unless a town adopts a records retention schedule (and notifies the Minnesota Historical Society), it may not destroy public records without the permission of the records disposition panel. Applications may be made to the State Archives Department for such permission. For instance, bids with supporting documents received by a town must be kept forever, unless the town (1) adopts the General Records Retention Schedule for Towns, in which case, the town must maintain these records for ten years, (2) adopts its own properly approved records retention schedule, or (3) receives authority to dispose of the records from the records disposition panel.

A political subdivision that wishes to adopt the appropriate General Records Retention Schedule can find information on the [State Archives website](#).

For information and assistance in disposing of or transferring government records, contact:

Minnesota Historical Society  
State Archives Department  
345 Kellogg Boulevard West  
St. Paul, Minnesota 55102-1906  
(651) 259-3260

<http://www.mnhs.org/preserve/records/index.htm>

Questions about the Minnesota Government Data Practices Act should be directed to:

Minnesota Department of Administration  
Information Policy Analysis Division  
201 Administration Building  
50 Sherburne Avenue  
St. Paul, Minnesota 55155  
(651) 296-6733  
(800) 657-3721

<http://www.ipad.state.mn.us>

In future years, the *Minnesota Legal Compliance Audit Guide for Towns* will be updated and additional compliance sections may be added. If you have comments or suggestions with regard to future editions, please contact us at:

Office of the State Auditor  
525 Park Street, Suite 500  
St. Paul, Minnesota 55103  
(651) 296-2551  
(651) 296-4755 (Fax)

<http://www.auditor.state.mn.us>

**TOWN  
DEPOSITORIES OF PUBLIC FUNDS  
AND  
PUBLIC INVESTMENTS**



# LEGAL COMPLIANCE AUDIT GUIDE

## DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS

### Introduction

A government entity that receives and disburses funds may deposit the funds only in financial institutions designated by its governing body. The governing body may authorize its treasurer or chief financial officer to make such designations. The government entity may deposit funds in amounts that are federally insured or, if it deposits more than this amount, it must either have the depository furnish a bond or assign collateral to protect the excess deposit.

“Government entity” for the purpose of this section included Towns:

Minn. Stat. § 118A.01, subd. 2. This section does not apply to entities whose investment authority is specified under Minn. Stat. ch. 11A (Investment of State and Pension Assets), or 356A (Public Pension Fiduciary Responsibility). *Id.*

“Public funds” for the purpose of this section means all general, special, permanent, trust, or other funds, regardless of source or purpose, held or administered by a government entity, unless otherwise restricted. Minn. Stat. § 118A.01, subd. 4.

When auditing a Town, complete this section to determine if the Town has properly invested its funds or deposited its funds in a properly designated depository with appropriate collateral or bond.

**OPEB Trusts** - The assets of a trust created to pay postemployment benefits (giving rise to a liability under GASB Stmt. 45) to employees or officers after their termination of service shall be invested and held as provided in Minn. Stat. § 471.6175.

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
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**Part I. Designation of Depository**

§ 118A.02, subd. 1	A. In the case of a town:			
	1. Has each depository of public funds been designated by the government entity’s governing body, or by its treasurer or chief financial officer, if the governing body has authorized them to make such a designation?			
§ 118A.01, subd. 3	2. Is each depository one of the following:			
	a. a savings association;			
	b. a commercial bank;			
	c. a trust company;			
	d. a credit union; or			
	e. an industrial loan and thrift company?			

**Part II. Insuring or Securing Deposits**

§ 118A.03	A. If a town desires to deposit an amount in excess of deposit insurance, it must obtain a bond or collateral which, when computed at its market value, shall be at least ten percent more than the amount of the excess deposit at the close of the banking day. For the purpose of this section, “banking day” has the meaning given in Federal Reserve Board Regulation CC, 12 C.F.R. § 229.2(f), and incorporates a financial institution’s cutoff hour established under Minn. Stat. § 336.4-108. If irrevocable standby letters of credit from Federal Home Loan Banks are used as collateral, the amount must be equal to the amount of the excess deposit at the close of the banking day.			
	B. Review the following general principles of FDIC coverage and complete the spread sheet in this section to determine the amount of the town’s funds that are not insured and thus need to be either bonded or collateralized. Deposits held by credit unions are covered by separate deposit insurance rules promulgated by the National Credit Union Administration (NCUA).			
	<p><b>General Principles of FDIC coverage:</b></p> <p>1. Deposits are insured only if the depository is a member of FDIC.</p> <p>2. Deposits in one depository are insured separately from deposits in another depository which is not a branch of the first one. However, a depository and all of the branches associated with it are treated as a single combined depository, and the funds deposited in the branches are aggregated for purposes of insurance coverage.</p>			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	<p>3. The aggregate of a government entity's time/savings accounts, i.e., savings accounts, NOW accounts, and time deposits (CDs), with the same depository are insured up to a total of \$250,000. The aggregate of a government entity's demand accounts, i.e., non-interest and interest-bearing checking accounts, are insured up to a total of \$250,000 and are insured separately from the government entity's time/savings deposits. This separate \$250,000 coverage for demand and time/savings accounts only applies if the depository is in the same state as the government entity.</p> <p>4. A public authority, public corporation, public commission, or special district receives separate insurance coverage from its parent government entity only if its creation is expressly authorized by state statute, government functions have been delegated to it by law, and funds have been allocated for its exclusive use and control. Subordinate or non-autonomous divisions, agencies, or boards do not receive separate insurance coverage.</p> <p>5. Funds held for a special purpose and required by law to be paid to bondholders or beneficiaries such as members of pension funds or relief associations are covered up to \$250,000 per bondholder or beneficiary whether the beneficial interest is vested or not. The fiduciary nature must be indicated on the account name in the bank's records.</p> <p>6. If more than one person is legal or official custodian of funds for a government entity, each custodian having plenary authority (including control) over the funds is separately insured up to \$250,000. Also, if the same person is the custodian of funds for two separate government entities, the funds for the two government entities are separately insured.</p> <p>7. Moneys held by a government entity in trust are insured separately from other government entity funds only if the trust is linked to a written trust agreement, court order or statute, the owner does not retain an interest in the use of the assets, and the interests of beneficiaries are ascertainable and not contingent.</p>			
	<p>C. Was collateral coverage sufficient? (Answer after completing the spreadsheet on page 1-11.)</p>			

<b>Part III. The Bond and Collateral</b>				
§ 118A.03, subd. 1	A. If a bond was furnished by the depository to the town, answer the following question:			
	1. Was the bond executed by a corporate surety company authorized to do business in the state?			
§ 118A.03, subd. 2	B. If the depository assigned collateral to the government entity, answer the following questions:			
	1. Was the collateral one of the following:			
	a. U.S. government treasury bills, notes, or bonds;			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	b. issues of a U.S. government agency or instrumentality that are quoted by a recognized industry quotation service available to the government entity;			
	c. a general obligation of a state or local government, with taxing powers, rated "A" or better;			
	d. a revenue obligation of a state or local government, with taxing powers, rated "AA" or better;			
	e. unrated general obligation securities of a local government, with taxing powers, pledged as collateral against funds deposited by that same local government entity;			
	f. an irrevocable standby letter of credit issued by a Federal Home Loan Bank accompanied by written evidence that the Federal Home Loan Bank's public debt is rated "AA" or better by Moody's or Standard and Poor's; or			
	g. time deposits insured by any federal agency?			
§ 118A.03, subd. 7	2. Was the collateral placed for safekeeping:			
	a. In a restricted account at the Federal Reserve Bank; or			
	b. in an account at a trust department of a commercial bank or other financial institution not owned or controlled by the depository?			
	3. Did the government entity approve of the selection of the safekeeping entity?			
§ 118A.03, subd. 4	4. Was the collateral assignment in writing?			
	5. Did the assignment provide that, upon default, the depository shall release the collateral pledged to the government entity on demand, free of exchange or other charges?			
§ 118A.03, subd. 3	C. Collateral pledged must equal at least ten percent more than the uninsured and unbonded amount on deposit at the close of the banking day. If irrevocable standby letters of credit from Federal Home Loan Banks are used, the amount must be equal to the amount of the excess deposit at the close of the banking day. The depository may, at its discretion, furnish both a bond and collateral aggregating the required amount.  For the purpose of this section, "banking day" has the meaning given in Federal Reserve Board Regulation CC, 12 C.F.R. § 229.2(f), and incorporates a financial institution's cutoff hour established under Minn. Stat. § 336.4-108.			
	1. If a bond was obtained or standby letters of credit from Federal Home Loan Banks were pledged, was the amount of excess deposit at the close of the banking day (as defined above) equal to or less than the amount of the bond or standby letters of credit?			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	2. If other collateral was pledged, was the amount of collateral at least ten percent more than the uninsured amount on deposit at the close of the banking day?			
	D. Assignment [Federal Statutory Requirements]			
[12 U.S.C. § 1823(e)]	1. Was the written assignment approved by the depository's board of directors or loan committee?			
	2. Was the assignment an official record of the depository?			

<b>Part IV. Public Investments</b>				
	A. Were all repurchase agreements and reverse repurchase agreements <u>only</u> entered into with:			
§ 118A.05, subd. 2	1. a financial institution qualified as a depository of public funds;			
	2. any other financial institution which is a member of the Federal Reserve System <u>and</u> whose combined capital and surplus equals or exceeds \$10,000,000;			
	3. a primary reporting dealer in United States government securities to the Federal Reserve Bank of New York; or			
	4. a securities broker-dealer licensed pursuant to chapter 80A, or an affiliate of it, regulated by the Securities and Exchange Commission and maintaining a combined capital and surplus of \$40,000,000 or more, exclusive of subordinated debt?			
§ 118A.06	B. If the government entity safekeeps investments with a third party:			
	1. Is the government entity's ownership of all securities in which the fund is invested evidenced by written acknowledgments identifying the securities by the names of the issuers, maturity dates, interest rates, CUSIP numbers, or other distinguishing marks?			
	2. Were investments, contracts, and agreements held in safekeeping with:			
	a. a Federal Reserve Bank;			
	b. any bank authorized under the laws of the United States or any state to exercise corporate trust powers, including, but not limited to, the bank from which the investment is purchased;			
	c. a primary reporting dealer in United States government securities to the Federal Reserve Bank of New York; <u>or</u>			
	d. a securities broker-dealer, or an affiliate of it, that			
	(1) Is registered as a broker-dealer under Chapter 80A or is exempt from the registration requirements;			
	(2) is regulated by the Securities and Exchange Commission; <u>and</u>			

Minn. Stat. Section	DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS	Yes	No	Workpaper Reference
	(3) maintains insurance through the Security Investor Protection Corporation (SIPC) or excess insurance coverage in an amount equal to or greater than the value of the securities held?			
	C. Were the securities sold or pledged under the repurchase agreement or reverse repurchase agreement permissible direct investments under Minn. Stat. § 118A.04 (see L and M below)?			
	D. Were all reverse repurchase agreements only entered into:			
§ 118A.05, subd. 2	1. for a period of 90 days or less; and			
	2. only to meet short-term cash needs and not to generate cash for investments?			
	E. Were all securities lending agreements (including custody agreements) entered into only with:			
§ 118A.05 subd. 3	1. a financial institution qualified as a depository having an office in Minnesota; or			
	2. a financial institution which is a member of the Federal Reserve System <u>and</u> whose combined capital and surplus equals or exceeds \$10,000,000, <u>and</u> which has an office in Minnesota?			
	F. Did the custodian or entity operating the securities lending program only enter into securities lending transactions with those entities identified in Part IV.A. (above)?			
§ 118A.05, subd. 5	G. Guaranteed investment contracts or agreements			
	1. Were all guaranteed investment contracts or agreements only entered into with an issuer or guarantor that was a U.S. commercial bank, a domestic branch of a foreign bank, a U.S. insurance company, or its Canadian subsidiary, or the domestic affiliates of any of the foregoing?			
	2. Was the issuer's or guarantor's long-term and short-term unsecured debt:			
	a. rated in one of the highest two categories by a nationally recognized rating agency, <u>or</u>			
	b. was the term of the guaranteed investment contract 18 months or less, <u>and</u> was the credit quality of the issuer's short-term unsecured debt rated in the highest category by a nationally recognized rating agency (regardless of the credit quality of the issuer's or guarantor's long-term unsecured debt)?			
	H. Did all guaranteed investment contracts give the public entity withdrawal rights in the event the issuer's or guarantor's credit quality was downgraded below "A"?			
§ 118A.05, subd. 4	I. Did the town only invest in shares of a Minnesota joint powers investment trust whose investments were restricted to securities described in Minn. Stat. §§ 118A.04 and 118A.07, subd. 7?			

Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
§ 118A.05, subd. 4	J. Mutual Funds - Did the town invest only in shares of an investment company that met the criteria in either 1 or 2 below:			
	1. a. registered under the Federal Investment Company Act of 1940;			
	b. whose shares were registered under the Federal Securities Act of 1933;			
	c. whose fund received the highest credit rating;			
	d. that was rated in one of the highest risk rating categories by at least one nationally recognized statistical rating organization; <u>and</u>			
	e. that only invests in financial instruments with a final maturity no longer than 13 months?			
	2. a. registered under the Federal Investment Company Act of 1940;			
	b. which holds itself out as a money market fund meeting the conditions of SEC rule 2a-7; <u>and</u>			
	c. is rated one of the two highest rating categories for money market funds by at least one nationally recognized statistical rating organization?			
	K. Did the town invest only in units of a short-term investment fund:			
	1. established and administered pursuant to regulation 9 of the Comptroller of the Currency; and			
	2. in which investments are restricted to securities described in Minn. Stat. § 118A.04?			
	L. Were all other funds invested in instruments which met at least one of the following criteria:			
	1. In governmental bonds, notes, bills, mortgages, and other securities, which were direct obligations or are guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress, excluding mortgage-backed securities defined as "high risk" (see Section M - Mortgage-Backed Securities);			
	2. In a general obligation of a state or local government with taxing powers which was rated "A" or better by a national bond rating service;			
	3. In a revenue obligation of a state or local government which was rated "AA" or better by a national bond rating service;			
	4. In a general obligation of the Minnesota Housing Finance Agency which was a moral obligation of the State of Minnesota and is rated "A" or better by a national bond rating agency;			

Minn. Stat. Section	DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS	Yes	No	Workpaper Reference
	5. In an obligation of a school district with an original maturity not exceeding 13 months which is (i) rated in the highest category by a national bond rating service or (ii) enrolled in the credit enhancement program pursuant to Minn. Stat. § 126C.55; [Note: This authority is in addition to and does not limit the authority provided by items 2 and 3, above.]			
	6. In commercial paper issued by a United States corporation or its Canadian subsidiary and that:			
	a. was rated in the highest quality category by at least two nationally recognized rating agencies, and			
	b. matures in 270 days or less;			
	7. In time deposits fully insured by the Federal Deposit Insurance Corporation;			
	8. In bankers' acceptances issued by United States banks;			
§ 118A.04, subd. 7	9. In its own temporary obligations issued under Minn. Stat. §§ 429.091, subd. 7 (special assessments), 469.178, subd. 5 (tax increment bonds), or 475.61, subd. 6, <u>or</u>			
§ 136F.91	10. (For counties, cities, towns and other municipal corporations, political subdivisions and political bodies) Bonds issued by Minnesota State Colleges and Universities under Minn. Stat. §§ 136F.90 to 136F.98?			
§ 118A.04, subd. 8	Note: A debt service fund can purchase any issue payable from the fund.			
	M. Mortgage-Backed Securities			
§ 118A.04, subd. 2	Government entities may only purchase mortgage-backed securities that are direct obligations or guaranteed or insured issues of the United States, its agencies, its instrumentalities, or organizations created by an act of Congress.			
	Mortgage-backed securities purchased shall not be "high risk." Minn. Stat. § 118A.04, subd. 6, states, "high risk mortgage-backed securities" are:			
§ 118A.04, subds. 2 & 6	1. interest-only or principal-only mortgage-backed securities; and			
	2. any mortgage derivative security that:			
	a. has an expected average life greater than ten years; or			
	b. has an expected average life that:			
	(1) will extend by more than four years as the result of an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or			
	(2) will shorten by more than six years as the result of an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or			



Minn. Stat. Section	<b>DEPOSITORIES OF PUBLIC FUNDS AND PUBLIC INVESTMENTS</b>	Yes	No	Workpaper Reference
	c. will have an estimated change in price of more than 17 percent as the result of an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.			
	3. Were all mortgage-backed securities purchased by the government entity after August 1, 1993, <u>not</u> "high risk?"			

<b>Part V. Broker Acknowledgement Certification</b>				
§ 118A.04, subd. 9	A. Annually, prior to completing an initial investment transaction with each broker, did the town provide to that broker a written statement of investment restrictions?			
	B. Did the broker acknowledge receipt of the investment restrictions and agree to handle the town's account in accordance with the restrictions?			
	C. Did the town retain documentation of compliance with A and B above?			

<b>Part VI. Audit Conclusion</b>				
The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to depositories of public funds and investments.				
Conclusion:				



**TOWN  
CONFLICTS OF INTEREST**

# LEGAL COMPLIANCE AUDIT GUIDE

## CONFLICTS OF INTEREST

### Introduction

Rule: A public officer authorized to take part in the making of a sale, lease, or contract shall not voluntarily have a personal financial interest in the transaction or personally benefit financially from it. Minn. Stat. § 471.87. The following persons are specifically forbidden from having any interest in any contract made by their respective governing bodies:

1. elected officers;
2. town supervisors and town board members;
3. county officials, county deputies, county clerks, and employees of such officials; or
4. school board members.

Exceptions: For practical reasons, the legislature has created certain limited exceptions to the general prohibition. Exceptions apply to port authorities, seaway port authorities, economic development authorities, watershed districts, soil and water conservation districts, towns, school districts, hospital districts, counties and cities. Minn. Stat. § 471.88. Part I of this questionnaire will assist you in making a determination as to whether an otherwise forbidden transaction fits within any of the statutory exceptions. Care should be taken to determine whether any exception considered applies to the entity and contract being audited.

For the purposes of this checklist, “interested officer” shall mean a public officer or employee, as listed above, who directly or through his or her spouse (see “Discussion” below) has a prohibited position or interest in either the entity making or the subject matter of the sale, lease, or contract with the governing body. Examples include:

1. officer;
2. director;
3. employee (see “Discussion” below);
4. partner;
5. owner (complete or partial); or
6. shareholder.

Discussion: The determination as to whether a particular transaction involves an “interested officer” often calls for a judgment on the part of the auditor. A helpful concept to remember for analysis is that it is a conflict of interest to be on both sides of a contract or transaction.

Most problems in this regard arise in the examination of the “interest” the public officer has in the person or entity making the contract with the governing body. Two frequent problem areas are:

1. Contracts with Officer’s or Employee’s Spouse or Family Member.

It is not a conflict of interest per se for a governing body to contract or otherwise economically transact with a member officer’s spouse or family member. However, if the facts indicate an economic benefit to the member officer as a result of the contract or transaction, a conflict of interest exists. For example, if a husband and wife, one of whom is a public officer, share a common pool of funds and likewise share debts, conflicts may exist because there is benefit to the public officer or employee flowing from the economic benefit to his or her spouse. Likewise, if a governmental officer or employee and his or her spouse, in fact, do not economically benefit from each other, a conflict may not exist. This analysis would apply to all familial relationships. The auditor will need to factually determine whether an emancipated child living away from home has a financial interest with his or her parents.

2. Contracts with Companies in Which the Officer is an Employee.

If the involved governmental officer or employee is simply a company employee without managerial powers and receives the same salary or raise regardless of the company’s contract with the governing body, there probably is no conflict of interest. However, if said officer receives a bonus or commission or other benefit as a result of the contractual transaction between his or her company and the government entity, there is definitely a conflict of interest.

There are numerous aspects to be examined by the auditor in order to understand the totality of interests involved in a given contract or transaction between the governing body and an entity or person with a relationship to a member officer.

If, after review of the facts and applicable statutes, you are still unsure as to whether a particular set of circumstances constitutes a conflict of interest, you should contact an attorney for advice prior to preparing the “Audit Conclusion” at the end of this audit guide section.

Other Statutory References to Conflicts of Interest. In addition to the general statutory prohibition on conflicts of interest cited in the checklist, auditors should be aware that other statutory prohibitions and requirements exist with regard to certain types of municipal entities:

<u>Persons/Entities</u>	<u>Statute</u>
Public and local officials of metropolitan governmental units (as defined by Minn. Stat. § 10A.01, subds. 35, 22, and 24)	§ 10A.07
Housing and Redevelopment Authorities (commissioners and employees)	§ 469.009
Economic Development Authorities (commissioners and employees)	§ 469.098

Minn. Stat. Section	CONFLICTS OF INTEREST		Yes	No	Workpaper Reference
<b>Part I. Contracts Generally</b>					
§ 471.87	- Unless a statutory exception applies, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit therefrom.				
	- The Town Board may contract for goods or services with an interested officer only by unanimous vote. <u>See</u> A, infra. In addition to the unanimous vote, one of the statutory exceptions must apply. <u>See</u> B, infra.				
§ 471.88, subd. 1	A. Contract for Goods or Services/Unanimous Approval				
	1. If there were any sales, leases, or contracts between the Town Board and an interested officer, was each contract a contract for goods or services? <u>and</u>				
	2. If there were any sales, leases, or contracts between the Town Board and an interested officer, did the Town Board approve the transaction by unanimous vote?				
	Note: In general, all <u>members</u> present must vote in order to produce a unanimous vote; except that the interested officer may abstain (as a practical matter).				
	B. Statutory Exceptions				
§ 471.88, subd. 2	1. Designation of Bank or Savings Association  If the transaction involved the designation of a bank or savings association as an authorized depository for public funds and as a source of borrowing:				
	a. Did the interested officer disclose to the Town Board that he or she was a director or employee of the bank or savings association?				
	b. Was such disclosure entered into the minutes of the Town Board's meeting prior to the first designation of the bank or savings association as a depository or at the time of the interested officer's election, whichever was later?				
§ 471.88, subd. 3	2. Designation of Official Newspaper				
	If a transaction involved the designation of an official newspaper or publication of official matters therein:				
	a. Was the newspaper in which the officer had an interest the only newspaper complying with statutory or charter requirements relating to designation or publication?				

Minn. Stat. Section	CONFLICTS OF INTEREST		Yes	No	Workpaper Reference
§ 471.88, subd. 4	3. Stockholder of Cooperative Association  If the transaction involved a contract with a cooperative association:				
	a. Was the officer a shareholder or stockholder and not an officer or manager of the cooperative association?				
§ 471.88, subd. 5	4. Contracts That Do Not Need to Be Bid				
	If an interested officer entered into a contract for goods and services with the governing body:				
	a. Was the contract one that did not need to be bid?				
	(See discussion of contracts that are subject to bidding on page 4-1.)				
§ 471.89, subd. 2	b. Did the Town Board, prior to performance of the contract, authorize the contract by adopting a resolution setting forth the essential facts and determining that the contract price was as low or lower than the price at which the commodity or service could be obtained elsewhere?				
§ 471.89, subd. 3	c. Prior to payment of the contract, did the interested officer file with the Town Clerk an affidavit stating:				
	(1) the name of the officer and office held;				
	(2) an itemization of the commodity or services furnished;				
	(3) the contract price;				
	(4) the reasonable value;				
	(5) the interest of the officer in the contract;				
	(6) that to the best of his/her knowledge and belief the contract price was as low or lower than the price at which the commodities or services could have been obtained from other sources?				
§ 471.89, subd. 2	d. If the contract was entered into under emergency conditions, did the Town Board adopt such a resolution prior to payment of the claims in which the facts of the emergency are also stated?				
§ 471.88, subd. 6	5. Contract with Fire Department				
	If the Town Board entered into a contract with a fire department in which an interested officer was a member:				
	a. Was the fire department a volunteer fire department?				
	b. Was the contract for payment of compensation or payment of retirement benefits?				

Minn. Stat. Section	CONFLICTS OF INTEREST		Yes	No	Workpaper Reference
§ 471.88, subd. 6a	6. Contract with Volunteer Ambulance Service				
	Was the contract with a volunteer ambulance service for the payment of compensation to its members or for payment of retirement benefits to these members?				
§ 471.88, subd. 12	7. Contract for Construction Materials or Services				
	If an interested officer contracted with the Town to provide construction materials or services, or both:				
	a. Was the contract done by a sealed bid process?				
	b. Does the Town have a population of 1,000 or less according to the last federal census?				
	c. When the question of the contract came before the Town Board for consideration, did the officer refrain from voting?				
§ 471.88, subd. 13	8. Contract for Renting Space				
	If a public officer rented space in a public facility, was the rate commensurate with that paid by other members of the public?				
§§ 365.37, subd. 1; 471.88	9. Conflicts of Interest: All Other Contracts or Transactions  If there were any contracts or transactions between an interested officer and the governing body, were the contracts or transactions included in the exceptions above (B1-8)?				
	Note: If your audit involves a port authority, a public housing authority, a municipal band, a housing and redevelopment authority, an economic development authority, or a community action program or private consultant, review subdivisions 7, 9, 10, 11, or 14 of Minn. Stat. § 471.88 for additional exceptions.				

Part II. Purchase of Merchandise from Governmental Agency					
§ 15.054	A. Political subdivisions are prohibited from selling property or materials owned by the political subdivision to its officers or employees. <u>Employees</u> may make purchases from political subdivisions if the following criteria are met.				
	For all purchases:				
	1. Was the property or materials purchased by the public employee not needed for public purposes?				
	2. Was the purchase made through sealed bids or public auction?				



Minn. Stat. Section	<b>CONFLICTS OF INTEREST</b>	Yes	No	Workpaper Reference
	3. Was the employee <u>not</u> directly involved with the sealed bid or auction process?			
	4. Was the applicable "notice" law followed, and did the same require at least one week of published notice?			
	Minn. Stat. § 15.054 does not apply to property or materials acquired or produced by political subdivisions for sale to the general public in the ordinary course of business.			

<b>Part III. Audit Conclusion</b>
<p>The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to conflicts of interest.</p> <p>Conclusion:</p>

**TOWN  
PUBLIC INDEBTEDNESS**

## LEGAL COMPLIANCE AUDIT GUIDE

### PUBLIC INDEBTEDNESS

#### Introduction

The power of a Town to incur indebtedness is governed by statutory provisions. Each type of borrowing instrument may be governed by different statutes. Therefore, it is essential that the auditor examine the specific statutes that are applicable to the particular borrowing transaction.

This questionnaire is intended only to highlight certain general provisions of the Minnesota statutes relating to indebtedness and is not intended to cover all questions that may be pertinent.

**Which of the following types of borrowing has the Town been involved with during the past year? Please check all forms of borrowing that have either been issued or redeemed during the past year or which are currently outstanding at year-end.**

	During the Year	
	<u>Issued</u>	<u>Outstanding</u>
<b>LONG-TERM BORROWING:</b>		
General Obligation Bonds (Minn. Stat. ch. 475)		
Revenue Bonds (Minn. Stat. ch. 475)		
General Obligation Revenue Bonds (Minn. Stat. ch. 475)		

	During the Year	
	<u>Issued</u>	<u>Outstanding</u>
<b>SHORT-TERM BORROWING:</b>		
Orders Not Paid for Want of Funds (Minn. Stat. § 367.19)		
Loans Funded or Secured Under United States Agriculture Department Programs (Minn. Stat. § 465.73)		
Temporary Improvement Bonds (Minn. Stat. § 429.091, subd. 5)		
Emergency Certificates of Indebtedness (Minn. Stat. § 475.754)		
Certificates of Indebtedness (Minn. Stat. § 366.095)		
Reverse Repurchase Agreements/Securities Lending Agreements (Minn. Stat. § 118A.05)		
Conditional Sales Contract/Contract for Deed (Minn. Stat. § 365.025)		
Lease Purchase Agreements (Minn. Stat. § 465.71)		
Emergency Debt Certificates (Minn. Stat. § 475.755)		

Minn. Stat. Section	PUBLIC INDEBTEDNESS			Yes	No	Workpaper Reference
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**Part I. Answer the following questions with respect to all types of indebtedness that were issued during this fiscal year:**

§ 475.51, et. seq.	A. Was Town/Board approval obtained for new debt issued during this fiscal year?			
§ 475.58, subd. 2	B. For debt funding or refunding obligations issued under Minn. Stat. § 475.58, subd. 2:			
	1. Did the entity's outstanding gross debt exceed 1.62% of its estimated market value?			
	2. Was a listing of the indebtedness to be funded or refunded prepared by the treasurer and recording officer and filed in the office of the recording officer?			
§ 475.58 subd. 2	3. Was the resolution, stating the amount of bonds to be issued and referring to the listing of indebtedness to be funded or refunded, published in the legal newspaper once each week for two successive weeks?			
	Note: Refunding obligations may be authorized by Minn. Stat. § 475.67 for which the notice required here is not applicable.			
	C. Considering the issuance of the obligations, will the net debt (as defined in Minn. Stat. § 475.51, subd. 4) of the municipality not exceed the net debt limit as is applicable below:			
§ 475.53, subd. 1	For all towns, does the net debt not exceed three percent of the estimated market value of taxable property in the municipality?			
§ 475.58, subd. 1	D. Was the request to issue the obligations submitted for approval at an election?			
§ 475.58, subd. 4	1. If so, were the proceeds only spent:			
	a. (1) for the purposes stated in the ballot language; or (2) to pay, redeem, or defease obligations and interest, penalties, premiums, and costs of issuance of the obligations; and			
	b. were none of the proceeds spent for a different purpose or for an expansion of the original purpose without approval by a majority of the electors voting on the question of changing or expanding the purpose of the obligations?			
§ 475.58, subd. 1	2. If not, was this issuance exempt from approval by the electors for one of the following reasons:			
	It represented an obligation characterized as:			
	a. any unpaid judgment against the municipality;			
	b. refunding obligations;			

Minn. Stat. Section	PUBLIC INDEBTEDNESS			Yes	No	Workpaper Reference
	c.	an improvement or improvement program, the obligation for which is payable wholly or partly from the proceeds of special assessments levied upon property specially benefited by the improvement or by an improvement within the improvement program or from tax increments, including obligations which are the general obligations of the municipality, if the municipality is entitled to reimbursement in whole or in part from the proceeds of such special assessments or tax increments and not less than 20 percent of the cost of the improvement or the improvement program is to be assessed against benefited property or is to be paid from the proceeds of federal grant funds or a combination thereof, or is estimated to be received from tax increments.				
	d.	an obligation which is payable wholly from the income of revenue producing conveniences;				
	e.	an obligation exempt from electoral approval by the terms of the home rule charter;				
	f.	exempt under the provisions of a law which permits the issuance of obligations of a municipality without an election;				
	g.	an obligation to fund pension or retirement fund liabilities of a municipality pursuant to Minn. Stat. § 475.52, subd. 6;				
	h.	issued under Minn. Stat. §§ 469.1813 to 469.1815 (property tax abatement authority bonds), if the bonds are not used for a purpose prohibited under § 469.176, subd. 4g, para. (b);				
§ 475.58, subd. 1(10)	i.	issued to fund postemployment benefit liabilities pursuant to Minn. Stat. § 475.52, subd. 6, of a municipality, other than a school district, <u>and</u> were the liabilities limited to:				
		(1) satisfying the requirements of Minn. Stat. § 471.61, subd. 2b (insurance continuation); and				
		(2) other postemployment benefits, which the municipality no longer provides to employees hired after a date before the obligations are issued?				
§ 475.755	j.	issued under Minn. Stat. § 475.755 (emergency debt certificates)?				
§ 475.58, subd. 3a	k.	issued to refund existing debt of an indoor ice arena that is used predominantly for youth athletic activity as provided in Minn. Stat. § 475.58, subd. 3a;				
§ 475.58, subd. 3b	l.	issued for street reconstruction and bituminous overlays, and were the conditions of Minn. Stat. § 475.58, subd. 3b met?				
§ 475.58, subd. 1a	E.	If the issuance of obligations for the same purpose and in the same amount has previously been proposed to the electors and voted down, did this election take place at least 180 days after the first election?				
	F.	If this is the third request for the same purpose and in the same amount, did this election take place at least one year after the second election?				

Minn. Stat. Section	<b>PUBLIC INDEBTEDNESS</b>	Yes	No	Workpaper Reference
§ 475.60, subds. 2 & 3	G. Was the sale of these obligations in accordance with the public notice and public sale requirements of Minnesota statutes?			
§ 475.60, subd. 2	1. If no, was the sale exempt from public sale due to any of the following reasons:			
	a. obligations issued under the provisions of a home rule charter, or under a law specifically authorizing a different method of sale or authorizing them to be issued in such a manner as the council/board may determine;			
	b. obligations sold by the municipality in an amount not exceeding the total sum of \$1,200,000 in any 12-month period;			
	c. except for those issued by a school board, obligations issued in anticipation of the collection of taxes or other revenues appropriated for expenditure in a single year, if sold in accordance with the most favorable of two or more proposals solicited privately;			
	d. obligations sold to any board, department, or agency of the United States of America or the State of Minnesota, in accordance with the rules of the board, department, or agency;			
	e. obligations issued to fund pension and retirement fund liabilities under Minn. Stat. § 475.52, subd. 6; obligations issued with tender options under Minn. Stat. § 475.54, subd. 5a; crossover refunding referred to in Minn. Stat. § 475.67, subd. 13; and any issue of obligations comprised in whole or in part of obligations bearing interest at a rate or rates which vary periodically referred to in Minn. Stat. § 475.56;			
	f. obligations to be issued for a purpose, in a manner, and upon terms and conditions authorized by law, if the governing body of the municipality, on the advice of bond counsel or special tax counsel, determines that interest on the obligations cannot be represented to be excluded from gross income for purposes of federal income taxation;			
	g. obligations issued in the form of an installment purchase contract, lease purchase agreement, or other similar agreement;			
	h. obligations sold under a bond reinvestment program; or			
	i. obligations which the governing body determines shall be sold by private negotiation if the municipality has retained an independent municipal adviser?			
§ 475.55, subd. 1	H. Were all obligations signed manually by one officer of the municipality or by a designated authenticating agent?			
§ 475.65	I. Did the treasurer account for the receipt and disbursement of the proceeds of the issue, for the use named in the resolution, in a separate fund or account in the official financial records of the municipality?			
§ 475.61, subd. 2, & § 475.62	J. Was the appropriate information reported to the county auditor for all new issues of indebtedness so that the county register could be updated? (Information to include: the purpose and date of the issue; the number, denomination, interest rate, and maturity date of each bond; place and time of payment of principal and interest; and the amount of the tax levied for the payment thereof.)			

Minn. Stat. Section	PUBLIC INDEBTEDNESS	Yes	No	Workpaper Reference
§ 471.69	K. Limitation on Outstanding Warrants and Orders			
	1. Did the school district, county, statutory city, or town <u>not</u> contract debt, or issue any warrant or order in anticipation of taxes levied or to be levied, in excess of:			
	- the average amount actually received from tax collections for the last three years, plus			
	- ten percent?			
	The Minn. Stat. § 471.69 limitations do not apply to government entities wherein the mineral net tax capacity exceeds 25 percent of its net tax capacity. Nor does it apply to a school district in a city of the first class, which constitutes a single school district.			

**Part II. Answer only the questions below that relate to the specific types of debt that were issued during the current fiscal year:**

§ 475.61, subd. 1	A. GENERAL OBLIGATION BONDS:			
	1. Did the Town, prior to delivery of the obligations, levy by resolution a direct general ad valorem tax upon all taxable property to be spread each year of the obligations?			
	2. For all Towns, were the levies specified and such that if collected in full they, together with estimated collections of special assessments and other revenues pledged for payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments on the obligations when due?			
§ 367.19	B. ORDERS: (For towns)			
	1. Were orders presented to the treasurer and registered in the order of their presentment?			
	2. Were orders paid in the order they were registered out of the first money that came into the treasurer's hands for that purpose?			
§ 465.73	C. USDA RURAL BUSINESS-COOPERATIVE SERVICE, RURAL HOUSING SERVICE, OR OTHER AGENCY OF THE USDA: (For town halls, fire halls, and fire equipment only, or libraries or child care facilities if otherwise authorized by law.			
	1. Is the amount borrowed from the USDA Rural Business-Cooperative Service, Rural Housing Service, or other USDA agency, within the \$450,000 statutory limit?			
§ 475.754	D. EMERGENCY CERTIFICATES OF INDEBTEDNESS:			
	1. Do the certificates of indebtedness mature within three years?			
	2. Do the certificates of indebtedness bear interest at a rate not in excess of the allowable rate?			
	3. Are the certificates and interest thereon payable from taxes levied within existing limitations or from other available revenue?			

Minn. Stat. Section	PUBLIC INDEBTEDNESS	Yes	No	Workpaper Reference
§ 471.3455	E. PUBLIC SAFETY EQUIPMENT - Certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease.			
	- "Public Safety Equipment" means vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response.			
	- If the Town issued certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease, did the term not exceed 15 years?			
§ 366.095	F. CERTIFICATES OF INDEBTEDNESS: (Statutory cities and towns) NOTES: (Statutory cities) (For home rule charter cities, <u>see</u> Part II.B, above.)			
	Towns may issue certificates of indebtedness for any lawful purpose.			
	1. If such capital notes or certificates of indebtedness were issued, are they payable in not more than ten years?			
	Note exception: If certificates were issued for projects to eliminate R-22 (refrigerant in ice making systems in existing public facilities) as defined in Minn. Stat. § 240A.09 paragraph (b) clause (2), then they must be payable in no more than 20 years.			
	2. If the certificates or notes were issued under Minn. Stat. § 366.095, was the issuance of the certificates approved by the voters at an election?			
	If not, were the following criteria met:			
	a. The amount of the certificates or notes to be issued does not exceed 0.25 percent of the estimated market value of taxable property in the city or town; or			
	b. The council or town board resolution determining to issue these certificates or notes was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period?			
	Published resolution required only if costs exceed 0.25 percent of market value of taxable property in the city or town.			
	3. Was a tax levy made for the payment of the principal and interest on the certificates or notes?			
§§ 365.025	G. CONTRACT FOR DEED/CONDITIONAL SALES CONTRACT:			
	1. Is the seller of the property confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price?			
	2. Is the purchase payable over a period of time not to exceed five years?			
	3. Was the contract approved by the voters at an election?			
	a. If not, was the issue exempt from election because of one of the following reasons:			
	(1) the contract price of the property to be purchased does not exceed 0.24177 percent of the estimated market value of the city or town; or			



Minn. Stat. Section	PUBLIC INDEBTEDNESS		Yes	No	Workpaper Reference
	(2) the Town or Board resolution determining to purchase property by such a contract was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period?				
§ 475.755	H. EMERGENCY DEBT CERTIFICATES				
	<ul style="list-style-type: none"> <li>- If at any time during a fiscal year the receipts of a town are reasonably expected to be reduced below the amount provided in the local government's budget when the final property tax levy to be collected during the fiscal year was certified and the receipts are insufficient to meet the expenses incurred or to be incurred during the fiscal year, the Town Board may authorize and sell certificates of indebtedness to mature within two years or less from the end of the fiscal year in which the certificates are issued.</li> <li>- The maximum principal amount of the certificates that it may issue in a fiscal year is limited to the expected reduction in receipts plus the cost of issuance. The certificates may be issued in the manner and on the terms the governing body determines by resolution.</li> </ul>				
	1. If emergency debt certificates were issued, was the maturity date within two years of the end of the fiscal year in which they were issued?				
	2. Was the principal amount of the certificates limited to the expected reduction in receipts plus the cost of issuance?				
	3. Did the Town Board levy taxes for the payment of principal and interest on the certificates in accordance with section 475.61?				
	<p>4. To the extent that the Town issued certificates under Minn. Stat. § 475.755 to fund an unallotment or other reduction in its state aid, did the Town <u>not</u> use the special levy authority for aid reduction under section 275.70, subd. 5(22), or a similar or successor provision; <u>and</u></p> <p>Did it instead use the special levy authority for the repayment of indebtedness under Minn. Stat. § 275.70, subd. 5, clause (2), in order to levy under Minn. Stat. § 475.61 to fund repayment of the certificates with a levy that is not subject to levy limits?</p>				

**Part III. Answer the following questions for each type of issue that was outstanding at some point during the fiscal year:**

§ 475.61	A. Was the certified levy specified and such that it, together with estimated collections of special assessments and other revenues pledged for the payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments when due?			
	1. If not, did Town Board adopt a resolution levying another amount of such taxes?			



**TOWN  
CONTRACTING - BID LAWS**

# LEGAL COMPLIANCE AUDIT GUIDE

## CONTRACTING - BID LAWS

### Introduction

A municipality entering into an agreement for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property must abide by the statutes relating to contracting and bidding. In addition, for counties, such statutory requirements also apply to contracts for “work or labor.”

A municipality, for the purpose of this section, is a county, town, city, school district, or other municipal corporation or political subdivision of the state authorized by law to enter into contracts. Each contract must be approved by the appropriate authority, as authorized by statute or charter, within the municipality.

If the audited governmental unit is one of the listed types of municipalities and it has the power to contract, complete the questionnaire to determine if the municipality conformed to the contracting and bidding statutes.

Minn. Stat. § 471.345, the Uniform Municipal Contracting Law, was established to provide dollar limits for all municipalities upon contracts which shall or may be entered into on the basis of competitive bids, quotations, or purchase or sale in the open market. Vendors may now submit bids, quotations, and proposals electronically in a form and manner required by the municipality. Minn. Stat. § 471.345, subd. 18. Generally, the following thresholds apply:

1. For contracts over \$175,000 - sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision.
2. For contracts from \$25,000 to \$175,000 - sealed bids or direct negotiation, with two quotations whenever possible.
3. For contracts of \$25,000 or less - open market or quotations (with at least two contract quotations, if practicable).

In addition, Minn. Stat. § 471.345, subds. 16 and 17, allow municipalities to purchase supplies, materials, and equipment using an electronic reverse auction process; and to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process.

Best value procurement is a process based on competitive proposals (as an alternative to bids) that awards the contract to “the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in [Minn. Stat. § 16C.02, subd. 4a] and described in the solicitation document.” Minn. Stat. § 16C.28, subd. 1(a)(2). Before administering best value procurement procedures, personnel must be trained in the best value RFP process. *See* Minn. Stat. § 16C.28, subd. 1d.

Minnesota Statutes § 471.3457 authorizes local governments to implement programs to provide bid preferences to designated veteran-owned small businesses, as provided in Minn. Stat. § 375.771, in awarding service contracts and contracts as defined in Minn. Stat. § 471.345.

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
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Part I. Uniform Municipal and Contracting Law - Applies to All Municipalities				
	A. Generally, for all municipalities:			
§ 471.345	The estimated contract amount determines whether sealed bids or quotations are required. Vendors may submit bids, quotations, and proposals electronically in a form and manner required by the municipality.			
	1. Contracts over \$175,000 (sealed bids or best value procurement)			
	a. Sealed bids			
§ 471.345, subd. 3	(1) Have all contracts estimated to exceed \$175,000 been let on sealed bids?			
	(2) Have the bids been solicited by public notice?			
Minn. Stat. §§ 15.17, 138.17	(3) Were bids preserved and on file if the appropriate records retention period has not expired? (See Introduction section entitled "Destruction of Records," pages iii - iv, and the entity's records retention schedule.)			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, subd. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c) (2008).			
	2. Contracts from \$25,000 to \$175,000 can be made on sealed bids, by direct negotiation based on quotations, or through best value procurement.			
§ 471.345, subd. 4	a. Sealed bids or quotations			
	(1) Have contracts estimated to exceed \$25,000 but not to exceed \$175,000 been let on sealed bids or negotiated quotes?			
	(2) If sealed bids were used, were the requirements of A.1. met?			

Minn. Stat. Section	<b>CONTRACTING - BID LAWS</b>	Yes	No	Workpaper Reference
	(3) If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained?			
	(4) If quotations were used, were the quotations kept on file for at least one year?			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, subd. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c) (2008).			
	3. Contracts estimated to be \$25,000 or less may be made either upon quotation, in the open market, or through best value procurement.			
§ 471.345, subd. 5	a. If quotations were used, are they on file?			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative			
§ 16C.28, subd. 1	If a best value procurement procedure was used as an alternative:			
Minn. Stat. § 471.345, subds. 3a, 4a, and 5	(1) Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1(c)	(2) Did the solicitation document state the relative weight of price and other selection criteria?			
	(3) Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			

Minn. Stat. Section	CONTRACTING - BID LAWS		Yes	No	Workpaper Reference
	(4) If an interview of the vendor's or contractor's personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c) (2008).				
§ 471.345, subd. 16	B. Reverse Auction Purchase				
	If the municipality contracted to purchase using an electronic purchasing process:				
	1. Was the purchase a purchase of supplies, materials, or equipment, and <u>not</u> a contract for services or a service contract as defined in Minn. Stat. §§ 16C.02, subds. 16 and 17; and				
	2. Was the electronic process a purchasing process in which vendors competed to provide the supplies, materials, or equipment at the lowest selling price in an open and interactive environment?				
§ 471.345, subd. 17	C. Electronic Sale				
	If the municipality contracted to sell using an electronic selling process:				
	1. Was the sale a sale of supplies, materials, or equipment which was surplus, obsolete, or unused; and				
	2. Was the electronic process a selling process in which purchasers competed to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment?				
§ 331A.12	D Website publication - Transportation Contracts [For Transportation contracts, publication on the website may be used in place of or in addition to any other required form of publication, if certain requirements are met.]				
	If publication on the website was used in place of other required forms of publication:				
	1. Did the Town designate this manner of publication (on the political subdivision's website) at the meeting at which it designated its official newspaper?				
	2. Had the Town annually published notice (in a qualified newspaper and on the website) that the political subdivision would publish any advertisements for bids on its website?				
	3. Did the Town post the information on its website in substantially the same format and for the same period of time as required for publication in an official newspaper or other print publication?				
	4. Did the Town ensure that a permanent record of publication is maintained in a form accessible by the public?				

Minn. Stat. Section	CONTRACTING - BID LAWS			Yes	No	Workpaper Reference
§ 331A.03, subd. 3	E	Alternative Dissemination of Bids and Requests				
		If, as an alternative to publishing them in a newspaper, a town disseminated solicitations of bids, requests for information or requests for proposals by using a website or recognized industry trade journals:				
		1. Did the Town simultaneously publish, either in minutes or separately, in a notice published in the official newspaper, a description of all solicitations or requests so disseminated, along with the means by which the disseminations occurred?				
		2. Was the dissemination by alternative means in substantially the same format and for the same period of time as a publication in a qualified newspaper?				
		3. For the first six months after the Town designated an alternative means of dissemination, did it continue to publish solicitation of bids, requests for information, and requests for proposals in the official newspaper in addition to the alternative method?				
		4. Did the publication in the official newspaper indicate where to find the designated alternative method?				
§ 331A.01, subd. 11		Note: "Recognized industry trade journal" means a printed or digital publication or website that contains building and construction news of interest to contractors in this state, or that publishes project advertisements and bids for review by contractors or other interested bidders in its regular course of business.				
§ 471.345, subd. 5a	F	Town contracts for the rental of equipment estimated to be \$60,000 or less may, at the discretion of the board, be made by direct negotiation by obtaining two or more quotations when possible. If this method was used, were quotations kept on file for at least one year?				
§ 471.345, Subd. 15	G	If the Town contracted for the purchase of supplies, materials, or equipment without regard to competitive bidding requirements, was the purchase through the State of Minnesota's cooperative purchasing venture or a national municipal association's purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations?				
§ 471.345, Subd. 15	H	For each contract for the purchase of supplies, materials, or equipment over \$25,000, did the Town consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source				
		Note: Exceptions to the competitive bidding requirements of Minn. Stat. § 471.345 exist for water tank service contracts, procurement from economically disadvantaged persons, shared hospital or ambulance service purchasing, fuel contracts for generation of municipal power, procurement from rehabilitation facilities, energy efficient projects, solid waste contracts, and town road construction or maintenance contracts based on terms of county contracts for adjoining roads. If a contract you audit falls into one of these categories, review the relevant exceptions to see if its criteria are met. <u>See</u> Minn. Stat. §§ 471.345, subds. 5b, 8, 10, 11, 12, 13, and 19; and 400.04.				



Minn. Stat. Section	CONTRACTING - BID LAWS			Yes	No	Workpaper Reference
§ 16C.285	<p>I. Responsible Contractor Requirement</p> <p>For each construction contract in excess of \$50,000, awarded pursuant to a lowest responsible bidder or best value process, did the successful contractor submit a verification of compliance signed under oath by an owner or officer verifying compliance with the minimum criteria set forth in Minn. Stat. § 16C.285, subdivision 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subdivision 4?</p>					
§ 471.35	<p>J. Other Considerations</p>					
	<p>1. Specifications on contracts. If sealed bids were solicited, were the specifications written so as not to exclude all but one type or kind of supplies or equipment?</p>					
	<p>2. Interest in contract. (See Conflicts of Interest Section, page 2-1.)</p>					
§ 574.26	<p>3. Contractor's performance and payment bonds. Contractors doing public work are required to give both a performance bond and a payment bond in an amount not less than the contract price if the contract is more than \$175,000.</p>					
	<p>a. Were bonds received for all contracts greater than \$175,000?</p>					
	<p>b. Were the amounts sufficient?</p>					
	<p>Note: The contractor's performance and payment bond requirement does not apply to contracts for snow removal, ice removal, grading, or other similar routine road maintenance on town roads.</p>					
§ 574.261, subd. 1a	<p>Note: If the project is under \$50,000, contractor may provide for irrevocable bank letter of credit in place of a performance bond provided the letter of credit is subject to the same conditions as a performance bond.</p>					
§ 471.6161	<p>K. Group Insurance</p>					
	<p>Any town that provides group insurance for 25 or more employees must comply with certain bidding requirements in contracting for or renewing said insurance.</p>					
§ 43A.316, subd. 10	<p>Note: Towns participating in the public employee insurance program are exempt from the bidding requirements of Minn. Stat. § 471.6161. If this exemption does <u>not</u> apply:</p>					
	<p>1. Was the request for proposals (RFP) in writing?</p>					
	<p>2. Did the RFP include:</p>					
	<p>a. the coverage to be provided;</p>					
	<p>b. the criteria for evaluation of proposals; and</p>					
	<p>c. the aggregate claims record for the appropriate period?</p>					
	<p>3. Was the RFP notice placed in a newspaper or trade journal at least 21 days before the final date for submitting proposals?</p>					

Minn. Stat. Section	CONTRACTING - BID LAWS			Yes	No	Workpaper Reference
	4.	Was a written rationale explaining the political subdivision's decision prepared prior to entering into a contract?				
	5.	Was the term of the contract five years or less, including extensions?				
§ 471.3455	L.	Public Safety Equipment Purchase or Lease				
		If equipment was acquired pursuant to this statute without competitive bidding or proposals:				
	1.	Was the public safety equipment <u>used</u> , <u>and</u>				
	2.	was the equipment "public safety equipment," defined as vehicles and specialized equipment used by a fire department, as defined in Minn. Stat. § 299N.01, subd. 2, in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response, <u>and</u>				
	3.	was the equipment clearly and legitimately limited to a single source of supply?				
§ 471.425, subd. 4a	M.	Did each contract between the Town and a prime contractor require the prime contractor to pay subcontractors within ten days of receipt of payment from the government entity or pay interest at the rate of 1½ percent per month or any part of a month?				
§ 270C.66	N.	Withholding Affidavit/Certificate				
		Before making final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor and by subcontractors, did the entity obtain a certificate by the Commissioner of Revenue that the contractor or subcontractor has complied with the withholding requirements of Minn. Stat. § 290.92 (either Form IC134 or a Contractor's Withholding Affidavit Confirmation)?				

**Part II. Laws Relating Specifically to Towns**

	A.	Read Construction Contracts				
§ 365.37; for Road Construction Contracts, <u>see also</u> § 160.17	1.	Advertisement for Bids.				
	a.	Was a public notice of the time and place to submit bids posted in the three most public places in the town for ten days or published for two weeks in a newspaper generally circulated in the town? (For alternative methods, <u>see</u> section I.D., above.)				
	2.	If there was no notice given or sealed bids solicited, did a special emergency exist?  (A special emergency is a situation requiring immediate action essential to the health, safety, or welfare of the town.)				



**TOWN  
CLAIMS AND DISBURSEMENTS**

## **LEGAL COMPLIANCE AUDIT GUIDE**

### **CLAIMS AND DISBURSEMENTS**

#### Introduction

Municipal transactions involving an account, claim, or demand made for any property or service which can be itemized in the ordinary course of business and disbursements of municipal funds are covered in this section.

“Municipality” for the purposes of this section includes a town.

In addition, Minn. Stat. § 471.425 (Prompt Payment of Local Government Bills), applies to towns.

Minn. Stat. Section	<b>CLAIMS AND DISBURSEMENTS</b>	Yes	No	Workpaper Reference
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<b>Part I. General Provisions</b>
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§ 471.38, subd. 1	A. Has every person, or the person's agent, claiming payment provided an itemized list in writing or electronic transaction record?			
§ 471.38, subd. 2	Note: This section does not apply to any claim or demand for an annual salary or fees of jurors or witnesses, fixed by law, nor to the salary or wages of any employee whose salary or wages have been fixed on an hourly, daily, weekly, or monthly basis, by the governing board of the municipality, and which is now authorized by law to be paid on a payroll basis.			
§ 471.425, subd. 2	B. Prompt Payment of Local Government Bills			
	- Standard payment period is:			
	- 35 days from receipt for governing boards that meet at least once a month;			
	- 45 days from receipt of goods or services or invoice, whichever is later, for governing boards that do not meet at least once per month; and			
	- 45 days from receipt for joint powers entities.			
§ 471.425, subd. 2	1. Were all bills paid within the time period set by the terms of the contract or within the standard payment period?			
§ 471.425, subd. 4	- The Town must pay interest on bills not paid in a timely manner. The interest rate is 1½ percent per month or part of a month. The minimum monthly interest on a bill of \$100 or more is \$10.			
§ 471.425, subd. 4	2. For bills paid after the time period set by the contract or the standard payment period, did the Town calculate and pay interest as required by law?			
	Note: The interest penalties in these questions do not apply to good faith disputes.			

§ 367.18	<b>Part III. Claims and Disbursements</b>			
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	A. Were amounts paid on orders paid by the town treasurer, on the order of the town board, signed by the chair and countersigned by the clerk? [Note: In towns with a clerk/treasurer, the clerk/treasurer need sign only once.]			
	B. Was each order drawn so that when signed by the treasurer or clerk/treasurer in an appropriate place, it becomes a check on the town depository?			

Minn. Stat. Section	CLAIMS AND DISBURSEMENTS	Yes	No	Workpaper Reference
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Part II. Electronic Funds Transfer				
§§ 471.38, subds. 3 and 3a	A. A town may make electronic funds transfers under certain conditions.			
	1. A town may make electronic funds transfers for:			
	a. a claim for payment from an imprest payroll bank account or investment of excess money;			
	b. payment of tax or aid anticipation certificates;			
	c. payment of contributions to a pension or retirement fund;			
	d. vendor payments; and			
	e. payment of bond principal, bond interest, and a fiscal agent service charge from the debt redemption fund.			
	B. Did the town use electronic funds transfers only for the above enumerated transactions?			
	C. Did the town enact a plan containing the following policy controls requiring:			
	1. annual delegation of authority to make electronic funds transfers to a chief financial officer or the officer's designee?			
	2. the disbursing bank to keep a certified copy of delegation of authority?			
	3. identification of the initiator of each electronic transfer?			
	4. the initiator to document the request and obtain approval for each transfer from the chief financial officer or the officer's designee, before initiating the transfer, as required by the internal control policies?			
	5. written confirmation of each transaction within one business day?			
	6. a list of transactions to be submitted to the board at the next regular meeting after the transaction?			





**TOWN**  
**EXAMPLES OF INDEPENDENT AUDITOR'S REPORTS**

## LEGAL COMPLIANCE AUDIT GUIDE

### EXAMPLES OF INDEPENDENT AUDITOR'S REPORTS

Minnesota Legal Compliance	
Towns	6-2
Towns -- <i>Government Auditing Standards</i>	6-3
Combined Report	
Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	6-4

Independent auditor's report for Towns. (Note: Eliminate this paragraph from the report)

## MINNESOTA LEGAL COMPLIANCE

### Independent Auditor's Report

(Governing body)  
(Entity)

We have audited, in accordance with auditing standards generally accepted in the United States of America, the financial statements of *(list of opinion units)* \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements, which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

The *Minnesota Legal Compliance Audit Guide for Towns*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>1</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas from audit).

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Towns*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

This report is intended solely for the information and use of those charged with governance and management of \_\_\_\_\_ and the State Auditor and is not intended to be and should not be used by anyone other than these specified parties.

(Signature)  
(Date)

Independent auditor's report for towns, conducted under *Government Auditing Standards*. (Note: Eliminate this paragraph from the report.)

## MINNESOTA LEGAL COMPLIANCE

### Independent Auditor's Report

(Governing body)  
(Entity)

We have audited, in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of *(list of opinion units)* \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements, which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

The *Minnesota Legal Compliance Audit Guide for Towns*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>2</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas from audit).

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Towns*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

- If legal compliance findings are reported, use the following wording:

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Towns*, except as described in the Schedule of Findings and Questioned Costs as items *(list related finding reference numbers)*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

The purpose of this report is solely to describe the scope of our testing of compliance and the results of that testing, and not to provide an opinion on compliance. Accordingly, this communication is not suitable for any other purpose.

(Signature)  
(Date)

Auditor's internal control and compliance report based on an audit of financial statements performed in accordance with *Government Auditing Standards* and the *Minnesota Legal Compliance Audit Guide for Towns*. (Note: Eliminate this paragraph from the report.)

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING  
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN  
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

Independent Auditor's Report

[town board]

[town]

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of (*list related opinion units*) \_\_\_\_\_ as of and for the year ended \_\_\_\_\_, and the related notes to the financial statements, which collectively comprise the \_\_\_\_\_'s basic financial statements, and have issued our report thereon dated \_\_\_\_\_.

**Internal Control Over Financial Reporting\***

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention of those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

## Compliance and Other Matters\*\*

As part of obtaining reasonable assurance about whether \_\_\_\_\_'s financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### Minnesota Legal Compliance

The *Minnesota Legal Compliance Audit Guide for Towns*, promulgated by the State Auditor pursuant to Minn. Stat. § 6.65, contains seven categories of compliance to be tested: contracting and bidding, deposits and investments, conflicts of interest, public indebtedness, claims and disbursements, miscellaneous provisions, and tax increment financing. Our audit considered all of the listed categories, <sup>3</sup>except that we did not test for compliance with the provisions for (identify area not tested) because (state reasons for excluding any areas from audit).

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Towns*. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions. \*\*\*

### [Name of Entity]'s Response to Findings

\_\_\_\_\_ 's responses to the internal control and legal compliance findings (*adjust as necessary for what they responded to*) identified in our audit have been included in the [name of report where responses/corrective action plans are included]. The \_\_\_\_\_'s responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them. **[Leave out if no findings and no responses are included.]**

### Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the \_\_\_\_\_'s internal control over financial reporting and compliance. Accordingly, this communication is not suitable for any other purpose.

(Signature)

(Date)

\*paragraphs to be used when no significant deficiencies or material weaknesses are identified.

- If significant deficiencies, but no material weaknesses are identified, use the following wording:

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention of those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified. We did identify certain deficiencies (**a deficiency**) in internal control over financial reporting, described in the accompanying Schedule of Findings and Questioned Costs as item (*list item numbers*), that we consider to be significant deficiencies (**a significant deficiency**).

- If material weaknesses are identified, use the following wording:

In planning and performing our audit of the financial statements, we considered \_\_\_\_\_'s internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the \_\_\_\_\_'s internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as described in the accompanying Schedule of Findings and Questioned Costs, we identified certain deficiencies (**a deficiency**) in internal control over financial reporting that we consider to be material weaknesses (a material weakness) and significant deficiencies. **(If no significant deficiencies, adjust last sentence.)**

A deficiency in internal control over financial reporting exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the \_\_\_\_\_'s financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying Schedule of Findings and Questioned Costs as items [*list finding numbers*] to be material weaknesses, and items [*list finding numbers*] to be significant deficiencies **(If no significant deficiencies, adjust last sentence.)**

\*\*paragraph to be used when there are no reportable instances of noncompliance or other matters.

- If instances of noncompliance are reported, use following wording:

As part of obtaining reasonable assurance about whether \_\_\_\_\_'s financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*, and which are described in the accompanying Schedule of Findings and Questioned Costs as items [*list related finding reference numbers*].



\*\*\*paragraph when there are no legal findings.

- If legal compliance findings are reported, use the following wording:

In connection with our audit, nothing came to our attention that caused us to believe that \_\_\_\_\_ failed to comply with the provisions of the *Minnesota Legal Compliance Audit Guide for Towns*, except as described in the Schedule of Findings and Questioned Costs as items (*list related finding reference numbers*). However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the \_\_\_\_\_'s noncompliance with the above referenced provisions.

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<sup>1</sup> If the rest of the sentence does not apply, put a period here and continue to the next paragraph.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

**TOWN  
MISCELLANEOUS PROVISIONS**

# **LEGAL COMPLIANCE AUDIT GUIDE**

## **MISCELLANEOUS PROVISIONS**

### Introduction

This checklist, “Town Miscellaneous Provisions” must be completed by auditors in the course of each audit of a town. It contains provisions that do not fit squarely into the other checklists.

Minn. Stat. Section	MISCELLANEOUS PROVISIONS			Yes	No	Workpaper Reference
<b>Part I. Towns</b>						
§ 13D.01	A. Minnesota Open Meeting Law (Applies to the Town Board and to any committee, subcommittee, board, department, or commission of the Town Board.)					
	1. Were all meetings of the Town Board and of any committee, subcommittee, board, department, or commission of the Town Board open to the public?					
	2. If a meeting was closed, did the Town Board state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed?					
§§ 13D.05, subd. 1(d), 13D.03	3. Were all closed meetings, except those closed as permitted by the attorney-client privilege, electronically recorded at the expense of the public body?					
§§ 345.38-.43	B. Unclaimed Property.					
	If the Town's records show unclaimed or uncashed checks or other intangible property held for more than three years (or one year for unpaid compensation); was the property reported and paid or delivered to the state Commissioner of Commerce pursuant to Minn. Stat. §§ 345.41, .43?					
§ 465.03	C. Acceptance of Gifts					
	Was every acceptance of a grant or devise of real or personal property on terms prescribed by the donor made by resolution of the governing board adopted by a two-thirds majority of its members and expressing such terms in full?					
§ 169.022	D. Traffic Violation Administrative Penalties/Safety Classes					
	1. If the political subdivision has established administrative penalties, has the political subdivision refrained from establishing administrative penalties for traffic regulation, including speeding, DWI, missing plates or tabs, not wearing seatbelts, and other similar state traffic offences <u>or</u>  Was a resolution passed under Minn. Stat. § 169.999 (Administrative Citations for certain traffic offenses), and were the provisions of that section followed?					
	2. Has the political subdivision <u>not</u> established a safety class option in lieu of issuance or court filing of a state uniform traffic ticket?					
§ 471.665, subd. 3	E. Mileage Reimbursement/Automobile allowance					
	If the entity has established an automobile allowance for any officer or employee, is the allowance <u>in lieu of</u> all other mileage reimbursement to that officer or employee?					

Minn. Stat. Section	MISCELLANEOUS PROVISIONS	Yes	No	Workpaper Reference
§ 43A.17, subd. 9	F. Compensation Limit			
	1. Did the salary and the value of all other forms of compensation of each town employee not exceed 110 percent of the salary of the governor increased by the increase, if any, in the Consumer Price Index as described in Minn. Stat. § 43A.17, subd. 9 (b)? [This amount was \$165,333 for 2016, \$167,978 for 2017, and \$171,338 for 2018.]; <u>or</u>			
	2. Has the Town obtained an increase in the limit from the Commissioner of Management & Budget?			
§§ 15.17 & 138.17	G. Destruction of Records			
	If the Town disposed of government records, did it do so in compliance with a validly adopted records retention schedule or “Application for Authority to Dispose of Records?”			
	H. Public Purpose			
Ops. Atty. Gen. 442a-17, Jan. 17, 1938; 59a-22, Nov. 23, 1966; 270-D, Aug. 12, 1977; 174E, March 24, 1970	1. Did the entity refrain from donating money to people, nonprofit organizations, and charities unless allowed by specific authority?			
	2. Did the entity refrain from paying for Christmas parties and other employee social events?			
	3. Did the entity refrain from paying retroactive bonuses or pay increases unless the bonus or pay increase was paid under a pre-existing agreement or pursuant to collective bargaining?			
§ 471.6175	I. If a trust for Other Post-Employment Benefits (OPEB) was created pursuant to Minn. Stat. Section 471.6175, did the trust administrator report, no later than October 25th, to the State Auditor’s Office the investment return information required by Minn. Stat. Section 471.6175, subd. 4?			
§ 69.031	J. If the town has an incorporated firefighters’ relief association that was not covered by the voluntary statewide lump-sum volunteer firefighter retirement plan:			
	1. Did the town treasurer transmit the state aid from the Commissioner of Mgmt. and Budget to the relief association treasurer:			
	a. within 30 days of receipt; or			
	b. for a fire relief association which had not filed a financial report with the municipality, at a later date upon the relief association’s filing a financial report?			

Minn. Stat. Section	MISCELLANEOUS PROVISIONS	Yes	No	Workpaper Reference
§§ 69.031, subd. 5(a), & 424A.08	K. If the town (1) received fire state aid, (2) is not covered by the voluntary statewide lump-sum volunteer firefighter retirement plan under Minn. Stat., ch. 353G, and (3) had no firefighters' relief association, or the association has dissolved or has been removed as trustee of state aid:			
	1. were the funds placed in a special account in the town treasury?			
	2. were the funds only used for:			
	a. payment of fees, dues, and assessments to the Minnesota State Fire Department Association and to the State Volunteer Firefighters Benefit Association;			
	b. payment of the cost of purchasing and maintaining fire department equipment; or			
	c. payment of the cost of construction, acquisition, repair, or maintenance of buildings or other places housing the equipment of the fire department; or			
	d. If it has full-time firefighters covered by the public employees police and fire retirement plan, to pay the employer contribution requirement with respect to firefighters covered by the public employee police and fire retirement plan under Minn. Stat. § 353.65?			
§ 424A.08(c)	L. If the town has no volunteer firefighters' relief association directly associated with it and participates in the voluntary statewide lump-sum volunteer firefighter retirement plan under chapter 353G, did it transmit any fire state aid that it received to the voluntary statewide lump-sum volunteer firefighter retirement fund?			
§ 423A.022, subd. 2(2)	M. If the town received Police and Firefighter Supplemental State Aid paid pursuant to Minn. Stat. § 423A.022, was it transmitted to the applicable volunteer relief association within 30 days of receipt by the town treasurer?			

<b>Part II. Audit Conclusion</b>
The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to miscellaneous provisions.
Conclusion:

**TOWN  
TAX INCREMENT FINANCING**

## LEGAL COMPLIANCE MANUAL

### TAX INCREMENT FINANCING

#### Introduction

Tax increment financing (TIF) is a financing tool created to promote economic development, redevelopment, and housing in areas where it would not otherwise occur. Urban towns, described in Minn. Stat. § 368.01, that undertake development projects pursuant to Minn. Stat. §§ 469.152-.165 may be TIF authorities. *See* Minn. Stat. § 469.174, subd. 2. The TIF authority creates, and the municipality approves the establishment of, the TIF district. The county auditor certifies a TIF district and determines the original net tax capacity.

The authority captures the property tax revenues generated by the increase in net tax capacity resulting from the new development and uses this increase in property tax revenues, (the tax increments), to finance qualifying expenditures related to the new development. These qualifying expenditures generally relate to acquisition, clean up, and preparation of the site for construction. Each TIF district has a term of years depending on the type of district. Once the costs are paid and the TIF district is decertified, the tax base becomes fully available to the county, city, and school district for financing local services.

The Office of the State Auditor prepares Statements of Position to provide an educational resource to local governments, auditors and the public. Statements of Position on Tax Increment Financing topics are available on the Office of the State Auditor website. *See* <http://www.auditor.state.mn.us/default.aspx?page=statements>.

Auditors should determine whether any special laws applicable to the municipality or authority affect the general legal standards related to tax increment financing. Special laws are common with TIF, and are found in Table 1 of Minnesota Statutes.



Minn. Stat. Section	TAX INCREMENT FINANCING	Yes	No	Workpaper Reference
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**Part I. Segregation/Tax Increment Revenues**

§ 469.174, subd. 25	Note: Tax increment includes:			
	1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under section 469.177;			
	2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments received after June 30, 1997;			
	3. Principal and interest received on loans or other advances made by the authority with increments after June 30, 1997;			
	4. Interest or other investment earnings on or from tax or from tax increments received after July 1, 1997; and			
	5. Repayments or return of tax increments made to the authority under agreements for districts for which the request for certification was made after August 1, 1993.			
§ 469.177, subd. 5	Did the authority segregate tax increment from this district in a special account or accounts on its official books and records, or segregate it as otherwise established by resolution to be held by a trustee for the benefit of bondholders?			

**Part II. Interfund Loans**

§ 469.178, subd. 7	For interfund loans made after July 31, 2001, to finance TIF eligible expenditures, was the loan or advance authorized by resolution no later than 60 days after the money was first transferred, advanced, or spent?			
§ 469.178, subd. 7	Are the terms and conditions for repayment of the loan in writing, and do they include, at a minimum, the principal amount, the interest rate, and the maximum term?			
§ 469.178, subd. 7	Does the interest rate on the loan or advance not exceed the greater of the rates specified under section 270C.40 or 549.09?			
§ 469.178, subd. 7	Note: An authority or municipality may advance or loan money to finance TIF expenditures from "its General Fund or any fund under which it has legal authority to do so."			

**Part III. Four-Year Knock Down Rule**

§ 469.176, subd. 6	Note: If, after four years from the date of certification of the original net tax capacity of the district, no demolition, rehabilitation, or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer and water systems, has commenced on a parcel in the district, no additional increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the district.			
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